IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 16343 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE N.G.NANDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

AKHTAR @ TATA NAVSAD ANSARI

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 16343 of 2003

MR AR SHAIKH for Petitioner No. 1

MS PAURAMI SHETH Ld AGP for Respondent No.3

RULE SERVED for Respondent No. 1-2

CORAM : HON'BLE MR.JUSTICE N.G.NANDI

Date of decision: 29/01/2004

ORAL JUDGEMENT

1. Heard Ms.Banna Dutta for Mr.A.R.Shaikh, learned

advocate for the petitioner and Ms.Paurami Sheth, learned AGP for the respondent no.3.

2. By this petition under Article 226 of the Constitution of India, the petitioner (detenu) challenges the Detention Order No.PCB/DTN/PASA/100/2003 dated 17.5.2003 (Annexure-A) passed by respondent no.2 and prays for quashing and setting aside of the same.

3. It is stated by Ms.Banna Dutta, learned advocate for the petitioner that in the grounds of detention (Annexure-C) the incidents alleged do not attract public order and that the offences alleged against the petitioner are under Sections 454, 457, 380 and 114 of the Indian Penal Code in all the four cases, and that the cases registered against the petitioner and also the unregistered cases as per the statements of the witnesses disclosed alleged offences under Section 323 of the Indian Penal Code.

4. The present case is also squarely covered by the decision in the case of Ashokbhai Jivraj @ Jivabhai Solanki Vs. Police Commissioner, Surat and Others, 2000 (1) GLR 116. While dealing with Section 3 of the Gujarat Prevention of Anti-Social Activities Act,1985, the Division Bench held that "four cases registered against the detenu under IPC, looking to the incident the cases fall under the maintenance of "Law and Order" and not "Public Order" and therefore, the subjective satisfaction arrived by the Detaining Authority cannot be said to be legal or valid and the order of detention could have been passed on maintenance of "Public Order", detention order quashed".

5. In view of the above, the impugned detention order (Annexure-A) is liable to be quashed and set aside.

6. In the result, the petition is granted. The impugned order of detention dated 17.5.2003 (Annexure-A) passed by respondent no.2 against the petitioner detenu is hereby quashed and set aside. The petitioner is ordered to be set at liberty forthwith, if not required in any other case. Rule is made absolute accordingly. Direct service is permitted.

(N.G.Nandi,J.)

(vipul)